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July 18, 2005

Via Electronic Mail and Federal Express

Judge Ben Harrison
Administrative Hearing Officer, MC 6RC-D
United States Environmental Protection Agency, Region 6
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202-2733

Re: Comments of The Dow Chemical Company, Chromalloy American Corporation and LDL Coastal Limited, L.P. regarding the summary of the Unilateral Administrative Order Conference held on June 30, 2005, prepared by Regional Judicial Officer Ben J. Harrison dated 7-7-05 concerning the Gulfco Marine Maintenance Site, CERCLA Docket No. 06-05-05

Dear Judge Harrison:

These comments on the CERCLA Section 106 Conference Summary for the Unilateral Administrative Order Conference held on June 30, 2005, dated 7-7-05, concerning the Gulfco Marine Maintenance Site (the "Site"), CERCLA Docket Number 06-05-05, are submitted on behalf of The Dow Chemical Company, Chromalloy American Corporation and LDL Coastal Limited, L.P. ("Gulfco Parties"). The June 30, 2005 conference concerned the Unilateral Administrative Order dated May 23, 2005. EPA issued a modified order dated July 14, 2005 on July 14, 2005. These comments address the conference summary for the May 23, 2005 order, and also address the modified order dated July 14, 2005, to the extent the language of the modified order is the same as the May 23, 2005 order. The Gulfco Parties offer the following comments:

Cover Letter from Barbara A. Nann, Assistant Regional Counsel, dated July 8, 2005

Second Sentence: Change "Mr. Tyndall" to "Dr. Tyndall."

Conference Summary

Page 1, First Paragraph: Please clarify that the unilateral administrative order discussed at the June 30th conference was dated May 23, 2005, was sent to James Morriss by

Barbara Nann by electronic mail on June 6, 2005, and was served on the Respondents sometime after June 6, 2005.

Page 1, First Paragraph, Last Sentence: Revise to read: “The CERCLA Section 106(a) conference occurred on June 30, 2005, and representatives on behalf of The Dow Chemical Company, Sequa Corporation (on behalf of its subsidiary, Chromalloy American Corporation) and LDL Coastal Limited, L.P. (hereinafter, Respondents) and EPA participated.”

Page 1, Second Paragraph, Under “For the Respondents” Section:

In the third and fourth lines change “Dow Chemical” to “The Dow Chemical Company.” In the fifth line insert: “(on behalf of its subsidiary, Chromalloy American Corporation)” after “Sequa Corporation.” In the sixth line, change the spelling of Ms. VanWormer’s name to “Ms. Sandi VanWormer.”

Page 2, First Paragraph, Last Sentence: Revise the sentence to read that the parties were given five business days, until July 8, 2005, to submit written arguments, and that Ms. Nann agreed with the July 8th submission date.

Page 2, Third Paragraph:

Add the following language after the first sentence in this paragraph: “However, the Respondents did not concede at this conference that they would be conducting the investigation at the site under the UAO. The Respondents stated that if they are compelled to proceed under the terms of the UOA, the Respondents intend to advise EPA of their intent to comply with the UAO within the timeframe in the UAO.”

Revise the second sentence to read: “Respondents noted that negotiations are proceeding with the hope that an administrative order on consent returning the site to the State Voluntary Cleanup Program (“VCP”) could replace the Unilateral Order.”

Expand on the third sentence dealing with community relations as follows: “In addition, Respondents emphasized that active involvement in community relations is an important, overarching priority for the Respondents. The Respondents expressed their desire to take a proactive, leadership role in all community relations activities. The Respondents are willing to prepare drafts of all community relations documents, including Fact Sheets, press releases, public meeting information, and the Community Relations Plan, for EPA review and approval. The Respondents also desire to take an active, leadership role in all public meetings, community interviews and in meetings with individual stakeholders. The Respondents have already begun the process of identifying stakeholders, and have almost completed compilation of a stakeholders list. The Respondents have also prepared a preliminary internal draft Community Relations Plan based on a model provided by EPA. At the very minimum, the Respondents Parties request the right to review and comment on all public communications before they are issued and to be present in all public meetings, community interviews and meetings with individual stakeholders.”

At the end of the fourth sentence add: “but would raise the issue to their management and advise Respondents of EPA’s decision.”

Page 3, Section regarding the second paragraph 42, Section (5)(c): Add the following sentence to the end of this section: “EPA agreed that any subcontractor can work under the hiring contractor’s QMP, and does not have to have or submit an individual QMP to EPA.”

Page 3, Section regarding the second paragraph 42, Section (5)(d): At the end of the last sentence add: “but will have to get back to management regarding changes to the text, and will advise Respondents of EPA’s decision.”

Page 3, Add a section concerning UAO Paragraph 47 as follows: “The Respondents noted, that if the Respondents are compelled to proceed under the UAO, it is the Respondents’ intent to advise EPA of their intent to comply with the UAO and work cooperatively with EPA. The Respondents, however, want the Administrative Record to show that each of the Respondents reserves all rights to refrain from taking any action and to assert “sufficient cause” under CERCLA, at any time, if such party deems the requested action to be illegal or arbitrary.”

Page 3, Section (6), First Line: paragraph “52” should be paragraph “53.”

Page 4, Section (8), Last sentence and add a sentence: Revise as follows: “This involvement could include development of a record of decision which would provide for the return of the site to the State VCP for the remedy selection and completion. The Respondents want to preserve the means to work with EPA to return the site to the State VCP for remedy selection and completion.”

Page 4, Section (12), Add a sentence at the end of the section: “EPA agreed that only The Dow Chemical Company and Sequa Corporation (on behalf of its subsidiary, Chromalloy American Corporation) have to provide the financial assurance required by Paragraph 83.”

Page 4, Section (13), Add a sentence at the end of the section: “Also, any new contractor or subcontractor will have to provide insurance certificates to EPA seven days prior to doing any work at the site.”

Page 5, Section (17) second sentence and add sentence: Revise as follows: “Respondents would like to include this as part of the QAPP. This information would need to be submitted separately if there was a change in labs.”

Page 5, Section (19): Revise as follows: “For Task 6, Respondents intend to use the step-wise approach provided in the UAO where courses of action are determined based on what is discovered at the site. The Triad approach is consistent with this strategy. EPA agrees and supports this type of approach.”

Page 5, Section (20): Change paragraph “38” to paragraph “37” in the second line. Revise the second and third sentences as follows: “The Respondents note that this step-wise

approach is different than what EPA had requested in prior discussions. EPA agrees that the investigation under the UAO is different and indicates that this is a different process and the sequential investigation and risk assessment approach is acceptable.”

Page 6, Section (22): Mr. Moriss should be Mr. “Morriss”.

Page 6, Section (24), First word: add an “s” to “Respondent”.

Page 6, Add a Section (25) as follows: “Respondents requested all notes and other documents concerning Mr. Miller’s and other EPA representatives’ meetings and interviews with members of the public and prior public meetings. Mr. Miller and Ms. Nann said they would discuss the Respondents’ request and provide a response.”

Respectfully submitted,



Elizabeth A. Webb
Thompson & Knight, L.L.P.
Counsel for The Dow Chemical Company

cc: (via Electronic Mail)

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Gary Miller, US EPA Region 6
Sandi VanWormer, The Dow Chemical Company
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